Office - Supreme Court, U.S.
FILED
JUN 3 1985
ALEXANDER L. STEVAS,
CLERK

No. 84-1482

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1984

GEORGE L. KARAPINKA,

Petitioner

vs.

UNION CARBIDE CORPORATION,

Respondent

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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SUPPLEMENTAL BRIEF

GEORGE L. KARAPINKA
Petitioner pro se
3557 Collins Ferry Road, B-14
Morgantown, West Virginia 26505
(304) 599-8686

PRELIMINARY STATEMENT AND SUPPLEMENTAL QUESTION

This Supplemental Brief contains the facts which are essential to my Petition for a Writ of Certiorari, facts which have been obtained from the record of the U.S. Court of Appeals for the Second Circuit (No. 84-7916) on April 22, 1985 and from the record of the U.S. District Court for the Northern District of New York (No. 83-CV-1682) on May 24, 1985. My Petition for a Writ of Certiorari was docketed on March 21, 1985.

Whether the Docket Entries No. 84-7916 in the U.S. Court of Appeals for the Second Circuit show that my human rights were violated by the U.S. Court of Appeals.

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TABLE OF AUTHORITIES

Federal Rules of Civil Procedure

Rule 59(e)	1,4

Federal Rules of Appellate Procedure

Rule 40(a)	1,4

STATUTORY PROVISIONS

Rules

Rule 59(e) of Fed. R. Civ. P.: A motion to alter or amend the judgment shall be served no later than 10 days after the entry of the judgment.

Rule 40(a) of Fed. R. App. P.:A petition for rehearing may be filed within 14 days after entry of the judgment (Relevant part)

SUPPLEMENTAL STATEMENT OF THE CASE

The Petition for a Writ of Certiorari was docketed in this Court on March 21, 1985.

By the letter of March 30, 1985, the copy of which had been sent to the Clerk of this Court, I requested the Clerk of the Court of Appeals for the Second Circuit to forward to this Court the Appendix to the briefs and the Docket Entries No. 84-7916 of the Court of Appeals for the Second Circuit in accordance with Rule 19.1 of the Rules of this Court. By the letter of April 15, 1985 I was notified by the Clerk of the Court of Appeals for the Second Circuit

that the requested Appendix and the Docket Entries will not be forwarded to this Court unless they are requested by the Clerk of this Court. In my letter of May 3, 1985 I requested the Clerk of this Court to request the Clerk of the Court of Appeals to forward to this Court the Appendix and the Docket Entries. These documents are essential to the understanding of my Petition for a Writ of Certiorari because of the several references in it to the Appendix and to the Docket Entries.

On April 22, 1985 during my examination of the record in this case in the Court of Appeals for the Second Circuit No. 84-7916 I found the receipt of the mandate from the District Court. See sa-1*. This document with the Docket Entry of 1-3-85 (see sa-2,3): "Issued certified copy of order dated 12/24/84" shows that the mandate has been issued on January 3, 1985.

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* supplemental appendix - page, below

Further examination of the Docket Entries showed that the supplemental record, consisting of the essential to my appeal transcripts of the proceedings of the District Court on May 25, 1984 and on August 3 1984, had been filed in the Court of Appeals on 1-11-85, that is seven days after the issuance of the mandate. See sa-2,3.

My Motion for Rehearing was docketed 1/15/85 as the petition for rehearing. See sa-2,3. This Motion was my response to the Order of 12/24/84 of the dismissal of my appeal; the copy of that Order was received by me on January 8, 1985. See sa-6.

The last Docket Entry of 3-20-85 reads: "Order denying appellant KARAPINKA petition for rehearing filed" (sa-2,3). This Order was signed only by the Clerk of the Court of Appeals. See sa-4,5. This fact shows that my Motion for Rehearing was untimely because it was filed 22 days after the filing of the Order of dismissal of the appeal and

was therefore untimely under Rule 59(e) of Fed. R. Civ. P. or under Rule 40(a) of Fed. R. App. P. The clerk of the court of appeals does not have the authority to deny the motion for rehearing or the petition for rehearing on it's merits. This Order was received by me on March 27, 1985.

On May 24, 1985 my examination in the District Court of the judgment which had been entered September 21, 1984, the copy of which I had never received (see the Petition for Writ of Certiorari on a-12) showed that it consisted of one sentence stating that the action was dismissed with prejudice pursuant to Rule 12(b)(6) of F.R.C.P. This judgment was based on the District Court's Orders which were entered before my Notice of Appeal was entered on August 28, 1984 and this judgment was signed by a deputy clerk.

SUPPLEMENTAL ARGUMENT

THE DOCKET ENTRIES No. 84-7916 OF THE U.S. COURT OF APPEALS FOR THE SECOND CIRCUIT SHOW THAT MY HUMAN RIGHTS WERE VIOLATED BY THE U.S. COURT OF APPEALS

The Docket Entries of the U.S. Court of Appeals for the Second Circuit (see sa-2,3 below) show undisputedly that the Court of Appeals violated my human rights.

Firstly, the Court of Appeals issued on 1-3-85 (see sa-2,3) the mandate consisting of the Order of dismissal (see sa-1) without giving me the opportunity to file a timely motion for rehearing. I received the Order of the dismissal of my appeal on January 8, 1985 (see sa-6) after the mandate had been already issued on January 3, 1985 (see sa-2,3) and had been received by the District Court (see sa-1) on January 7, 1985.

Secondly, the supplemental record containing essential to my appeal transcripts of the District Court's proceedings on May 25, 1984 and on August 3, 1984 was docketed

in the Court of Appeals on 1-11-85 (see sa-2,3), seven days after the issuance of the mandate. These transcripts were ordered on August 27, 1984. See sa-6,7.

Thirdly, my Motion for the Direction of the Clerk of the Court of Appeals to obtain and to file the transcripts of the District Court's proceedings on May 25, 1984 and on August 3, 1984, which had been mailed to the Clerk of the Court of Appeals for the Second Circuit on December 20, 1984 (see sa-6,9), was never filed (see sa-2,3).

I, the petitioner, once more respectfully request this Court to obtain in accordance with Rule 19.1 of the Rules of this Court the Appendix to the briefs and the Docket Entries, which are essential to the proper understanding of my Petition for a Writ of Certiorari, from the Clerk of the Court of Appeals for the Second Circuit.

CONCLUSION

For all the forgoing reasons, I the petitioner respectfully request this Court to grant the Petition for a Writ of Certiorari.

Respectfully submitted,

George L. Karapinka
Petitioner pro se

3557 Collins Ferry Road, B-14
Morgantown, West Virginia
26505

SUPPLEMENTAL APPENDIX

(The following stamp and typewritten receipt from the U.S. District Court were superimposed on the Order of dismissal of the appeal which Order can be found on a-1 of the Petition for a Writ of Certiorari.)

"AIMS"

U.S. DISTRICT COURT
N.D. OF N.Y.
F I L E D

JAN 7 - 1985

AT ____ OCLOCK ___M
J.R. SCULLY Clerk
UTICA

The mandate, consisting of the items shecked below, has been received.

opinion
X order
statement of costs

Received by x Wm. A. Murphy
Date 1/7/85

GENERAL DOCKET

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

84-7916

	DATE	FILINGS-PROCEEDINGS
SM	11/05/84	Copy of district court docket entries and notice of appeal on behalf of Appellant Karapinka filed (Pro se)
RAG	11-05-85	Record on appeal filed (original papers of district court) (pro se)
RAG	11-05-84	Appellant Karapinka Form C filed (pro se)(w/pfs)(Received 09-04-
RAG	11-05-84	Appellant Karapinka Form D filed (pro se) (Received 09-04-84)
RAG	11-05-84	Appellee Union Carbide Corp. Counter-designation of the Appendix filed (w/pfs)(Received 10-15-84)
JJ	11/9/84	Scheduling Order #1 Filed (Pro Se)
MM	11-30-84	Appellee UNION CARBIDE motion for dismissal of the appeal for lack of jurisdiction filed (w/ps)
SM	12-07-84	Appellant Karapinka's memorandum in opposition to the motion of defendant appellee Union Carbide Corporation for dismissal of the appeal for lack of jurisdiction filed (W/PS)(Pro se)

jc	12-17-84	Appellant brief filed w/ps
jc	12-17-84	Appellant apendix filed w/ps
jc	12-17-84	Scheduling Order No. 2 filed (Pro-se)
JJ	12/24/84	Oder granting Appellee UCarbide Motion for Dismissal of the Appeal filed; (w/pfs) (Endorsed on Motion filed 11/30/84) (TJM, AlK, RJC CJJ)
JJ	1-3-85	Issued certified copy of order dated 12/24/84
cas	1-11-85	Supplemental record on appeal filed (original papers of district court)
SM	1/15/85	Appellant Karapinka petition for rehearing filed (W/PS) (Pro se)
mjf	3-20-85	Order denying appellant KARAPINKA petition for rehearing filed

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 20th day of March one thousand nine hundred and eighty-five.

Present:

HON. THOMAS J. MESKILL,

HON. AMALYA L. KEARSE,

HON. RICHARD J. CARDAMONE,

Circuit Judges,

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT
FILED

MAR 20 1985

ELAINE B. GOLDSMITH, CLERK

GEORGE L. KARAPINKA, Plaintiff-Appellant v. UNION CARBIDE CORPORATION, Defendant-Appellee.	No. 84-7916

A petition for a rehearing having been filed by plaintiff-appellant, George L. Karapinka, pro-se,

Upon consideration thereof, it is

Ordered that said petition be and it hereby is DENIED.

x Elaine B. Goldsmith

Elaine B. Goldsmith,
Clerk

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

GEORGE L. KARAPINKA, Appellant vs. UNION CARBIDE CORPORATION, Appellee	No. 84-7916 AFFIDAVIT OF GEORGE L. KARAPINKA

State of West Virginia)
County of Monongalia)

George L. Karapinka of full age being duly sworn upon his oath, deposes and says:

1. I make this Affidavit in support of my motion for rehearing of Union Carbide Corporation's motion for dismissal of my appeal.

2. I received the copy of the Order of this Court of December 24, 1984 granting Union Carbide Corporation's motion for dismissal of my appeal on January 8, 1985 in the usual daily mail delivery.

3. I paid my appeal's fee of $70.00,

$5.00 filing fee and $65.00 docketing fee, on August 28, 1984. The copy of the cancelled check was enclosed with my letter to the Clerk of this Court of November 12, 1984.

4. I ordered the transcripts of the District Court proceedings in this case of May 25, 1984 and of August 3, 1984 on August 27, 1984.

5. I did not receive the copy of the judgement refferred to by Union Carbide Corporation on page 4 of it's memorandum in support of it's motion for dismissal of my appeal.

6. During my argument in opposition to Union Carbide Corporation's Motion Under Rule 12(b)(6) for Partial Dismissal of the Amended Complaint and for a more definite Statement under Rule 12(e) on May 25, 1984 I was interrupted and not permitted by the District Court to complete my argument.

7. During my argument in support of my Motion to Reconsider District Court Jurgment of July 10, 1984 on August 3, 1984 I was interrupted and not permitted by the District

Court to complete my argument.

8. On December 24, 1984 during my examination of the Docket Entries of this case No. 84-7916 at about 1;30 PM in the Clerk's Office of this Court I did not see the entry there of this Court's Order of December 24, 1984 granting Union Carbide Corporation's motion for dismissal of my appeal.

9. On December 24, 1984 during my examination of the Docket Entries of this case No. 84-7916 in the Clerk's Office of this Court I did not see the entry there of the Affidavit of George L. Karapinka dated December 4, 1984 in opposition to Union Carbide Corporation for dismissal of my appeal.

10. On December 24, 1984 during my examination of the Docket Entries in this case No. 84-7916 in the Clerk's Office of this Court I did not see the entry of any supplemental record containing the transcripts of District Court proceedings in this case on May 25, 1984.

11.On December 24, 1984 during my examina-

tion of the Docket Entries of this case No. 84-7916 in the Clerk's Office of this Court I did not see there the entry of the Notice of Appearence for any of Union Carbide Corporation's attorneys.

12. On December 20, 1984 I served and mailed to the Clerk of this Court the supporting Affidavit of George L. Karapinka and the Notice of Motion for Direction of the Clerk of the Court of Appeals to obtain and to file the transcripts of the Court proceedings of the District Court on May 25, 1984 and on August 3, 1984.

x George L. Karapinka
George L. Karapinka

Sworn and subscribed
before me this 9th day
of January, 1985

x G. Gayle McBee

Official Seal
NOTARY PUBLIC
State of West Virginia
G. GAYLE Mc BEE
c/o The First National
Bank of Morgantown
P.O. Box 853
Morgantown, WV 26507
My Commission Expires
Sept. 7, 1994